

CLETIUS G. ROGERS

IBLA 83-313

Decided May 5, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 80013.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where a mining claim was located in December 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of

location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Cletius G. Rogers, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Cletius G. Rogers 1/ appeals the decision of December 6, 1982, wherein the California State Office, Bureau of Land Management (BLM), declared the unpatented Granite Mountain #1 lode mining claim, CA MC 80013, abandoned and void because no notice of intention to hold the claim or evidence of assessment work was filed with BLM in 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claim was located December 26, 1980, and was recorded with BLM on January 26, 1981. The claim is situated in secs. 30 and 31, T. 23 N., R. 6 E., Mount Diablo meridian, Plumas County, California.

Appellant states he mistakenly looked at the date of recordation with BLM instead of the actual date of location, and so overlooked filing his proof of labor with BLM in 1981. The proof of labor was recorded in Plumas County, California, on September 18, 1981.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county office where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon an act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

1/ The claim appears to be owned by Cletius G. Rogers and Thomas Berry.

As the claim herein was located December 26, 1980, a proof of labor or notice of intention to hold the claim was required to be recorded both in the records of Plumas County, California, and with BLM prior to December 31, 1981. As no filing was made with BLM, the claim was properly deemed to be abandoned.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon of September 1 succeeding the date of location of the claim, 30 U.S.C. § 28 (1976), so appellant was not required to perform assessment work until some time during the year running from September 1, 1981, to September 1, 1982. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring either an affidavit of assessment work performed or a notice of intention to hold the claim to be filed both with the local recording office and with BLM on or before December 30, 1981, since 1981 is the year following the calendar year in which the claim was located. Evelyn Parent, supra; Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

